



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both tenants appeared. The landlord's agent attended. Neither party raised any issues with service of evidence or the dispute resolution package.

Background to Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

At the commencement of the hearing I informed the parties that applications before the Residential Tenancy Branch may be resolved in one of two ways: mediation or adjudication.

In applications such as these, if in the course of mediation parties are able to reach an agreement, that settlement is recorded as a decision of the Residential Tenancy Branch and any order necessary to implement the settlement is issued by the Branch and has the same force and effect as if it were issued as a result of adjudication.

I informed the parties that settlement discussions occur on a "without prejudice basis", which means that I understand that parties may make concessions that do not have to

do with admission of any liability or waiver of any right, but have to do with personal, business, or other pragmatic reasons and a desire to reach a mutually agreed to solution to the problems in the tenancy. I informed the parties that in the course of a mediated outcome, I would not hear evidence, but that if the mediation was unsuccessful, the hearing would convert to the adjudicative model and I would hear evidence at that time.

I informed the parties that the alternate mode of dispute resolution available to them was adjudication. In the course of adjudication I am provided testimony and documentary evidence from which I make findings of fact. Those facts are applied to the law in order to reach a determination on the entitlement between the parties.

I informed the parties that the advantage to mediation was that the parties were able to tailor a specific remedy to the particulars of their circumstances. I informed the parties that the disadvantage to mediation was that it required the parties to reach a mutual agreement and that if the parties were too far apart that this might not be possible.

I informed the parties of the range of possible outcomes and the potential that the file would be dismissed for procedural reasons that had the potential to result in the parties appearing in a subsequent dispute resolution proceeding. In particular I raised my concerns regarding extinguishment pursuant to sections 24 and 36 of the Act.

The parties were given an opportunity to ask any questions of me. I answered all questions asked of me.

The parties elected to participate in mediation. Through mediation were able to reach an agreement to settle all outstanding disputes.

Although I heard evidence from the parties, as the outcome of this matter was achieved by way of a mediated settlement pursuant to section 63 of the Act, I have not made any findings of fact or any decision on the merits.

Record of Settlement

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The landlord agreed to return to the tenants \$400.00 from the security deposit by way of certified cheque.

2. The tenants agreed to bear the cost of preparing the certified cheque, which the landlord may offset from the amount payable to the tenants.
3. The tenants agreed that the landlord would retain \$400.00 from the tenants' security deposit.
4. The parties agreed that neither party would bring any further application in respect of this tenancy, which has ended.

Each party stated that he or she understood the terms of this agreement and agreed to it. The parties agreed that these particulars comprise the full and final settlement of all aspects of their disputes for both parties.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$400.00. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 21, 2016

Residential Tenancy Branch

